

'(2) The term 'telephone facsimile machine' means equipment which has the capacity to do either or both of the following: (A) to transcribe text or images (or both) from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

'(3) The term 'telephone solicitation' means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person (A) without that person's prior express invitation or permission, or (B) with whom the caller does not have an established business relationship. Such term does not include a call or message by a tax exempt nonprofit organization.

'(4) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person (A) without that person's prior express invitation or permission, or (B) with whom the caller does not have an established business relationship.

'(b) **RESTRICTIONS**- It shall be unlawful for any person within the United States by means of telephone—

'(1) to make any telephone solicitation in violation of the regulations prescribed by the Commission pursuant to subsection (c);

'(2) to use, to make any telephone solicitation, any telephone facsimile machine or any automatic telephone dialing system that does not comply with the technical and procedural standards prescribed under subsection (d), or to use, to make any telephone solicitation, any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards;

'(3) to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement in violation of any regulations prescribed by the Commission pursuant to subsection (e);

'(4) to use any automatic telephone dialing system to make unsolicited calls—

'(A) to any emergency telephone line or pager of any hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency; or

'(B) to any telephone number assigned to paging, specialized mobile radio, or cellular telephone service; or

'(5) to use a computer or other electronic device to send an unsolicited advertisement via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the advertisement or on the first page of each transmission, the date and time it is sent, an identification of the business sending the advertisement, and the telephone number of the sending machine or of such business

**'(c) Protection of Subscriber Privacy Rights-**

**'(1) RULEMAKING PROCEEDING REQUIRED-** Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall--

**'(A)** compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific 'do not call' systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

**'(B)** evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

**'(C)** consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

**'(D)** consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

**'(E)** develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

**'(2) REGULATIONS-**Not later than 240 days after the date of enactment of this section, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

**'(3) USE OF DATABASE PERMITTED-** The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, or to receiving certain classes or categories of telephone solicitations, and to make that compiled list available for purchase. If the Commission determines to require such a database, such regulations shall--

**'(A)** specify a method by which the Commission will select an entity to administer such database;

**'(B)** require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers

for telephone exchange service of the opportunity to provide notification. in **accordance** with regulations ~~established under this paragraph~~, **that** such subscriber ~~objects to receiving~~ telephone solicitations;

'(C) specify the ~~methods~~ by which ~~each~~ telephone subscriber shall be informed, by the common carrier ~~that~~ provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the ~~methods~~ by which such right may be exercised by the subscriber;

'(D) specify the methods by which such objections **shall be collected** and added to the database;

'(E) prohibit any residential subscriber **from being charged** for **giving** or revoking such notification or for being included in a ~~database~~ compiled under ~~this~~ section;

'(F) prohibit any person **from** making or ~~transmitting~~ a telephone solicitation to the telephone number of any subscriber included in such database;

'(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain **access** to the database, by area code or local exchange prefix, **as required** to avoid calling the telephone numbers of subscribers included in such database; **and** (ii) the **costs** to be recovered from such persons;

'(H) specify the methods for ~~recovering~~, from persons accessing such database, the **costs** involved in notifying, collecting, **updating**, disseminating, and selling, and **other** activities relating to, the ~~operations~~ of the database that are incurred by the entities carrying out ~~those~~ activities;

'(I) ~~specify~~ the frequency with which such database will be updated and specify the ~~method~~ by which such updating will take effect for purposes of compliance with subsection (b);

'(J) be ~~designed~~ to enable and require States to use the database mechanism selected by the Commission for purposes of ~~administering~~ or enforcing State law;

'(K) prohibit the use of such database for any purpose other than compliance with the ~~requirements~~ of ~~this~~ section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

'(L) ~~require~~ each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the ~~requirements~~ of ~~this~~ section and the regulations thereunder.

'(4) **CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD-** If the Commission determines to require the database mechanism described in paragraph (3), the **Commission shall-**

'(A) in developing procedures for **gaining access** to the **database**, consider the **different needs** of telemarketers conducting business on a **national, regional, State, or local level**;

'(B) develop a fee schedule or price structure for **recouping the cost of such database** that **recognizes such differences** and--

'(i) reflect the relative **costs** of providing a **national, regional, State, or local list** of phone numbers of subscribers who object to **receiving** telephone solicitations;

'(ii) reflect the relative **costs** of providing **such lists on paper or** electronic media; and

'(iii) not **place an unreasonable** financial burden on small businesses; and

'(C) consider (i) whether the needs of telemarketers operating on a local basis could be met **through** special **markings** of **area** white pages **directories**, and (ii) if such directories are needed **as an adjunct to database lists** prepared by area code and local exchange prefix.

'(d) **TECHNICAL AND PROCEDURAL STANDARDS-**

'(1) **TELEPHONE FACSIMILE MACHINES-** The Commission shall revise the regulations setting technical and procedural **standards** for telephone facsimile machines to require that any such machine which is manufactured **after 6 months** after the **date** of enactment of **this** section clearly marks, in a margin at the top or bottom of **each transmitted page or on the first page of each transmission**, the date and time **sent**. an identification of the business or other entity **sending** the **advertisement**, and the telephone number of the sending machine or of such business. The Commission shall exempt from such **standards**, for **12 months** after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and **transmission** and that are not capable of operation **through** an interface with a computer.

'(2) **AUTOMATIC TELEPHONE DIALING SYSTEMS-** The Commission shall prescribe technical and procedural standards for automatic telephone dialing **systems** that are used to transmit any prerecorded telephone solicitation. Such standards shall require that--

'(A) all prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or **address** of such business or other entity; and

'(B) such **systems** will, **as soon as** is technically practicable (giving the limitations of the telephone exchange **service** facilities) after the called party hangs up. automatically **create** a disconnect signal or on-hook condition which allows the called party's line to be **released**.

**'(e) CONSIDERATION OF FACSIMILE MACHINE RESTRICTIONS-** ~~within 120 days~~ after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding to prescribe rules to restrict the use of my telephone facsimile machine or computer or other electronic device to send any unsolicited advertisement to the telephone facsimile machine of any person. In establishing such restrictions, the Commission shall consider--

'(1) the extent to which unsolicited advertisements are transmitted through telephone facsimile machines;

'(2) the extent to which recipients of such advertisements incur costs for such receipt; and

'(3) the most cost effective methods of preventing advertising abuses with telephone facsimile machines.

**'(f) EFFECT ON STATE LAW-**

'(1) STATE LAW NOT PREEMPTED- Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits, either or both of the following:

'(A) The use of telephone facsimile machines or other electronic devices to send unsolicited advertisements.

'(B) The use of automatic telephone dialing systems to transmit prerecorded telephone solicitations.

**'(2) STATE REGULATION OF TELEPHONE SOLICITATIONS-** If, pursuant to subsection (c), the Commission requires the establishment of a database of telephone numbers of subscribers who object to receiving telephone solicitations or functionally equivalent method or procedure of Federal regulation, a State or local authority may not develop any different database or system for use in the regulation of telephone solicitations and may not enforce restrictions on telephone solicitations in any manner that is not based upon the requirements imposed by the Commission.

'(3) STATE ENFORCEMENT PERMITTED- Nothing in this section or in the regulations prescribed under this section shall prohibit the segmentation of the database or functionally equivalent method or procedure for use by State or local authorities, nor preempt any State or local authority from creating mechanisms to enforce compliance with the database or functionally equivalent system, or a segment thereof.

**'(g) EFFECTIVE DATE OF REQUIREMENTS-** The requirements of this section shall take effect 30 days after the date that regulations are prescribed under subsection (c).'

#### **SEC. 4. CONFORMING AMENDMENT.**

Section 2(b) of the Communications Act of 1934 is amended by striking 'Except as provided'

and ~~all~~ that follows through 'and subject to the provisions' and ~~inserting~~ 'Except as provided in sections 223 through 227, inclusive, and subject to the provisions'.

## SEC. 5. ALLOCATION OF AM RADIO FREQUENCIES.

Section 331 of *the Communications* Act of 1934 is amended—

(1) by striking the heading of such section and ~~inserting the following:~~

### **\*FREQUENCYALLOCATION POLICIES';**

(2) by ~~inserting~~ '(a) VERY HIGH FREQUENCY STATIONS-' after 'Sec. 331.'; and

(3) by adding at the end the following new subsection:

'(b) AM RADIO FREQUENCIES- It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local fulltime aural station licensed to that community and that is located in or adjacent to a major metropolitan market notifies the Commission that such licensee seeks to migrate to a new frequency, for the Commission to ensure that such a licensee receives an allotment or assignment to such a new frequency; if technically feasible.'.

Passed the House of Representatives November 18, 1991.

Attest:

DONNALD K. ANDERSON,

Clerk

HR 1304RFS----2

---

<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#"><u>Next Hit</u></a>	<a href="#"><u>Forward</u></a>	<a href="#"><u>New Bills Search</u></a>
<a href="#"><u>Prev Hit</u></a>	<a href="#"><u>Back</u></a>	<a href="#"><u>HomePage</u></a>
<a href="#"><u>Hit List</u></a>	<a href="#"><u>Best Sections</u></a>	<a href="#"><u>Help</u></a>
	<a href="#"><u>Doc Contents</u></a>	

---



---

<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#">Next Bit</a>	<a href="#">Forward</a>	<a href="#">New Bills Search</a>
<a href="#">Prev Bit</a>	<a href="#">Back</a>	<a href="#">HomePage</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Doc Contents</a>	

---

Bill 4 of 4

There are 3 other versions of this bill.

<a href="#">References to this bill in the Congressional Record</a>	<a href="#">Link to the <u>Bill Summary &amp; Status</u> file.</a>	<a href="#">Full Display</a> - 21,083 bytes. <a href="#">[Help]</a>
---	--	---

## H.R.1304

### Telephone Advertising Consumer Rights Act (Reported in the House)

---

Beginning

March 6, 1991

July 18, 1991

November 15, 1991

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 6, 1991]

SECTION 1. SHORT TITLE.

SEC 2. FINDINGS.

SEC 3. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT FOR ADVERTISING.

SEC 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT FOR ADVERTISING.

SEC 4. CONFORMING AMENDMENT.

---

EXHIBIT

3



---

<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#">Next Hit</a>	<a href="#">Forward</a>	<a href="#">New Bills Search</a>
<a href="#">Prev Hit</a>	<a href="#">Back</a>	<a href="#">HomePage</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Doc Contents</a>	

---

## H.R. 1304

### Telephone Advertising Consumer Rights Act (Reported in the House)

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the 'Telephone Advertising Consumer Rights Act'.*

#### SEC. 2. FINDINGS.

*The Congress finds that:*

- (1) The use of the telephone to market goods and services to the home and other businesses is now pervasive due to the increased use of cost-effective telemarketing techniques.*
- (2) Over 30,000 businesses actively telemarket goods and services to business and residential customers.*
- (3) More than 300,000 solicitors call more than 18,000,000 Americans every day*
- (4) Total United States sales generated through telemarketing amounted to 6435,000,000,000 in 1990, a more than four-fold increase since 1984.*
- (5) Unrestricted telemarketing, however, can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.*
- (6) Many consumers are outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers.*
- (7) Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations; therefore, Federal law is needed to control residential telemarketing practices.*
- (8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations.*
- (9) Individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and*

*permits legitimate telemarketing practices.*

### **SEC. 3. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT FOR ADVERTISING.**

*Title II of the Communications Act of 1934 is amended by inserting immediately after section 226 (47 U.S.C. 226) the following new section:*

### **'SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT FOR ADVERTISING.**

*'(a) DEFINITIONS- As used in this section:*

*'(1) The term 'automatic telephone dialing system' means equipment which has the capacity—*

*'(A) to store or produce telephone numbers to be called, using a random or sequential number generator;*

*'(B) to dial such numbers; and*

*'(C) to deliver, without initial live operator assistance, a prerecorded voice message to the number dialed, with or without manual assistance.*

*'(2) The term 'telefacsimile machine' means equipment which has the capacity to do either or both of the following: (A) to transcribe text or images (or both) from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.*

*'(3) The term 'telephone solicitation' means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person (A) without that person's prior express invitation or permission, or (B) with whom the caller does not have an established business relationship. Such term does not include a call or message by a tax exempt nonprofit organization.*

*'(4) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person (A) without that person's prior express invitation or permission, or (B) with whom the caller does not have an established business relationship.*

*'(b) RESTRICTIONS- It shall be unlawful for any person within the United States by means of telephone--*

*'(1) to make any telephone solicitation in violation of the regulations prescribed by the Commission pursuant to subsection (c);*

*'(2) to use to make any telephone solicitation, any telephone facsimile machine or any*

automatic telephone dialing system that does not comply **with** the technical and procedural **standards** prescribed **under** subsection (d), or **to use, to make any** telephone solicitation, any telephone facsimile machine or automatic telephone dialing **system** in a manner that does not **comply** with such **standards**;

'(3) **to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement in violation of any regulations prescribed by the Commission pursuant to subsection (e);**

'(4) **to use any automatic telephone dialing system to make unsolicited & -**

'(A) **to any emergency telephone line or pager of any hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency; or**

'(B) **to any telephone number assigned to paging, specialized mobile radio, or cellular telephone service; or**

'(5) **to use a computer or other electronic device to send an unsolicited advertisement via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the advertisement or on the first page of each transmission, the date and time it is sent, an identification of the business sending the advertisement, and the telephone number of the sending machine or of such business.**

'(c) **PROTECTION OF SUBSCRIBER PRIVACY RIGHTS.**

'(1) **RULEMAKING PROCEEDING REQUIRED-** Within **120** days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall -

'(A) **compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific 'do not call' systems, and any other alternatives, individual and or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;**

'(B) **evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;**

'(C) **consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;**

'(D) **consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and if such a finding is made and supported by the record, propose specific restrictions to the Congress; and**

~~'(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.~~

~~'(2) REGULATIONS- Not later than 240 days after the date of enactment of this section, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.~~

~~'(3) USE OF DATABASE PERMITTED- The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, or to receiving certain classes or categories of telephone solicitations, and to make that compiled list available for purchase. If the Commission determines to require such a database, such regulations shall –~~

~~'(A) specify a method by which the Commission will select an entity to administer such database;~~

~~'(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;~~

~~'(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;~~

~~'(D) specify the methods by which such objections shall be collected and added to the database;~~

~~'(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;~~

~~'(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;~~

~~'(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;~~

~~'(H) specify the methods for recovering from persons accessing such database, the costs involved in notifying, collecting, updating, disseminating, and selling.~~

and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities:

'(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with subsection (b);

'(J) be designed to enable and require States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

'(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

'(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

'(4) **CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD-** If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall—

'(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

'(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and—

'(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

'(ii) reflect the relative costs of providing such lists on paper or electronic media; and

'(iii) not place an unreasonable financial burden on small businesses; and

'(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

'(d) **TECHNICAL AND PROCEDURAL STANDARDS-**

'(1) **TELEPHONE FACSIMILE MACHINES-** The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after 6 months after the date of

enactment of this section clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business or other entity sending the advertisement, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards for 12 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

**(2) AUTOMATIC TELEPHONE DIALING SYSTEMS-** The Commission shall prescribe technical and procedural standards for automatic telephone dialing systems that are used to transmit any prerecorded telephone solicitation. Such standards shall require that—

(A) all prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business or other entity; and

(B) such systems will, as soon as is technically practicable (given the limitations of the telephone exchange service facilities) after the called party hangs up, automatically create a disconnect signal or on-hook condition which allows the called party's line to be released.

**(e) CONSIDERATION OF FACSIMILE MACHINE RESTRICTIONS-** Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding to prescribe rules to restrict the use of any telephone facsimile machine or computer or other electronic device to send any unsolicited advertisement to the telephone facsimile machine of any person. In establishing such restrictions, the Commission shall consider--

(1) the extent to which unsolicited advertisements are transmitted through telephone facsimile machines;

(2) the extent to which recipients of such advertisements incur costs for such receipt; and

(3) the most cost effective methods of preventing advertising abuses with telephone facsimile machines.

**(f) EFFECT ON STATE LAW-**

(1) **STATE LAW NOT PREEMPTED-** Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits, either or both of the following:

(A) The use of telephone facsimile machines or other electronic devices to send unsolicited advertisements.

(B) The use of automatic telephone dialing systems to transmit prerecorded

**telephone solicitations.**

**(2) STATE REGULATION OF TELEPHONE SOLICITATIONS-** *If, pursuant to subsection (c), the Commission requires the establishment of a database of telephone numbers of subscribers who object to receiving telephone solicitations or a functionally equivalent methods or procedures of Federal regulation, a State or local authority may not develop any different database or system for use in the regulation of telephone solicitations and may not enforce restrictions on telephone solicitations in any manner that is not based upon the requirements imposed by the Commission.*

**(3) STATE ENFORCEMENT PERMITTED-** *Nothing in this section or in the regulations prescribed under this section shall prohibit the segmentation of the database or functionally equivalent method or procedure for use by State or local authorities, nor preempt any State or local authority from creating mechanisms to enforce compliance with the database or functionally equivalent system, or a segment thereof.*

**(g) EFFECTIVE DATE OF REQUIREMENTS-** *The requirements of this section shall take effect 30 days after the date that regulations are prescribed under subsection (c). !*

#### **SEC. 4. CONFORMING AMENDMENT.**

*Section 2(b) of the Communications Act of 1934 is amended by striking 'Except as provided' and all that follows through 'and subject to the provisions' and inserting 'Except as provided in sections 223 through 227, inclusive, and subject to the provisions:*

**HR 1304 RH----2**

---

<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#">Next Hit</a>	<a href="#">Forward</a>	<a href="#">New Bills Search</a>
<a href="#">Prev Hit</a>	<a href="#">Back</a>	<a href="#">HomePage</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Doc Contents</a>	

---





<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#">Next Hit</a>	<a href="#">Forward</a>	<a href="#">New Bill. Search</a>
<a href="#">Prev Hit</a>	<a href="#">Back</a>	<a href="#">HomePage</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Doc Contents</a>	

Bill 2 of 4

There are 3 other versions of this bill.

References to this bill in the Congressional Record	Link to the <a href="#">Bill Summary &amp; Status file.</a>	<a href="#">Full Display</a> - 14,286 bytes. <a href="#">[Help]</a>
--	---	--

Telephone Advertising Consumer Rights Act (Introduced in the House)

HR 1304 SC

102d CONGRESS

1st Session

**H. R 1304**

To amend the Communications Act of 1934 to regulate the use of telephones in making commercial solicitations.

IN THE HOUSE OF REPRESENTATIVES

March 6, 1991

**Mr. MARKEY** (for himself, **Mr. RINALDO**, **Mr. RICHARDSON**, **Mr. SLATTERY**, **Mr. BOUCHER**, **Mr. COOPER**, **Mr. HARRIS**, **Mr. FRANK** of Massachusetts, **Mrs. ROUKEMA**, **Mr. SHAYS**, and **Mr. STARK**) introduced the following bill; which was referred to the Committee on Energy and Commerce

July 18, 1991

Additional sponson: **Mr. GALLO**, **Mrs. COLLINS** of Illinois, **Mr. GORDON**, **Mr. LEHMAN** of California, **Mr. PAYNE** of Virginia, **Mr. HORTON**, **Ms. KAPTUR**, **Mr. HOCHBRUECKNER**, **KLECZKA**, **Mr. LENT**, **Mr. PEASE**, **Mr. FUSTER**, **Mr. MAZZOLI**, **Mr. CARDIN**, **Mr. DICKINSON**, **Mr. BEREUTER**, **Mr. SCHUMER**, **Mr. ABERCROMBIE**, **Mrs. MORELLA**, **Mr. NEAL** of North Carolina, **Mr. SMITH** of New Jersey, **Mr. RAVENEL**, **Mr. BILBRAY**, **Mr. LIVINGSTON**, **Mr. MARTINEZ**, **Mr. LANCASTER**, **Mr. SERRANO**, **Mr. JOHNSTON** of Florida, **Mr. DWYER** of New Jersey, **Mr. ENGEL**, **Mr. VALENTINE**, **Mr. DELAY**, **Mr. MACHTLEY**, **Mr. DELLUMS**, **Mr. HUGHES**, **Mr. ECKART**, **Mrs. LOWEY** of New York, **Mr. SIKORSKI**, **Mr. MFUME**, **Mr. VENTO**, **Mr. WHEAT**, **Mr. MOORHEAD**, **Mr. PERKINS**, **Mrs. PATTERSON**, **Mr. REGULA**, **Mr. SKAGGS**, **Mr. JONES** of Georgia, **Mr. REED**, and **Mr. Paxon**

EXHIBIT

4

## **A BILL**

To amend the Communications Act of 1934 to regulate the use of telephones in making commercial solicitations.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Telephone Advertising Consumer Rights Act'.

### **SEC. 2. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT FOR ADVERTISING.**

Title II of the Communications Act of 1934 is amended by inserting immediately after section 226 (47 U.S.C. 226) the following new section:

#### **'SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT FOR ADVERTISING.**

'(a) ~~DEFINITIONS~~- As used in this section:

'(1) The term 'automatic telephone dialing system' means equipment which has the capacity—

'(A) to store or produce telephone numbers to be called, using a random or sequential number generator;

'(B) to dial such numbers; and

'(C) to deliver, without initial live operator assistance, a prerecorded voice message to the number dialed, with or without manual assistance.

'(2) The term 'telephone facsimile machine' means equipment which has the capacity to do either or both of the following: (A) to transcribe text or image: (or both) from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

'(3) The term 'telephone solicitation' means the initiation of a telephone message for the purpose of encouraging a person to purchase, rent, or invest in property, goods, or services without that person's prior express invitation or permission.

'(4) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

**(b) RESTRICTIONS-** It shall be unlawful for any person within the United States by means of telephone--

'(1) to ~~make~~ any telephone solicitation in Violation of the regulations prescribed by the Commission pursuant to subsection (c);

'(2) to ~~use~~, to make any telephone solicitation, any ~~telephone~~ facsimile ~~machine~~ or any automatic telephone dialing ~~system~~ that does not comply with the technical and procedural ~~standards~~ prescribed under subsection (d), or to ~~use~~, to make ~~my~~ telephone solicitation, any telephone facsimile machine or ~~automatic~~ telephone ~~dialing~~ system in a manner that does not comply with such ~~standards~~;

'(3) to use any telephone facsimile machine, computer, or ~~other~~ device to send an unsolicited advertisement in violation of any regulations prescribed by the Commission pursuant to subsection (e);

'(4) to ~~use~~ any automatic telephone dialing system to make unsolicited calls--

'(A) to ~~any~~ emergency telephone line or ~~pager~~ of any hospital, ~~medical~~ physician or ~~service office~~, health ~~care~~ facility, or ~~fire~~ protection or law enforcement agency; or

'(B) to any telephone number assigned to paging or cellular telephone ~~service~~; or

'(5) to ~~we~~ a computer or other electronic device to ~~send an~~ unsolicited advertisement via a telephone facsimile machine ~~unless~~ such person clearly ~~marks~~, in a margin at the top or bottom of ~~each transmitted~~ page of the advertisement, the date and ~~time~~ it is ~~sent~~ and an identification of the ~~business sending~~ the advertisement and the telephone number of the ~~sending~~ machine or of such business.

**(c) ELECTRONIC DATA BASE OF OBJECTING PERSONS-**

'(1) **ESTABLISHMENT AND OPERATION OF DATA BASE-** Within 60 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect telephone subscribers' privacy ~~rights~~ to avoid receiving telephone solicitations and the ~~need~~ to establish a single national data base to compile a list of telephone numbm of subscribers who have submitted objections under paragraph (2)(A) and to make that compiled list available for purchase. The proceeding shall--

'(A) ~~evaluate~~ whether such a data base should be established and administered by the Commission or its designee;

'(B) compare and evaluate ~~alternative~~ mechanisms for establishing ~~urd~~ administering the data base, in terms of their cost effectiveness and ~~their other~~ advantages and disadvantages; and

'(C) consider what ~~means~~ other than a national data base could be used to

accomplish the purposes of this section.

'(2) **REGULATIONS.** Not later than 210 days after the date of enactment of this section, the commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to require each common carrier providing telephone exchange service in accordance with the provisions of this section to establish and operate a data base described in paragraph (1), or shall determine under paragraph (3) that it is preferable for the Commission to determine that another means is preferable, the Commission shall prescribe regulations to--

'(A) require each common carrier providing telephone exchange service in accordance with the provisions of this section to afford subscribers of telephone exchange service the opportunity to provide notification in accordance with the provisions of this section, and (ii) the methods by which such subscriber objects to receiving telephone solicitations;

'(B) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber.

'(C) specify the methods by which such objections shall be collected and added to the data base;

'(D) prohibit any residential subscriber from being charged for or revoking such notification or for being carried on a list compiled under this section;

'(E) prohibit any person from transmitting a telephone solicitation to the telephone number of any subscriber contained on such list;

'(F) specify (i) the methods by which any person desiring to transmit telephone solicitations will be required to obtain copies of such list; and (ii) the costs to be recovered from such persons;

'(G) specify the methods for recovering, from persons obtaining such list, the costs involved in notifying, collecting, updating, disseminating, and selling, and other activities relating to, the list that are incurred by the entities carrying out those activities;

'(H) specify the frequency with which such data base will be updated and specify the method by which such updating will take effect for purposes of compliance with subsection (b);

'(I) be designed to permit and encourage States to use the data base mechanism selected by the Commission under paragraph (1) for purposes of administering or enforcing State law;

'(J) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for

protection of the privacy rights of persons whose numbers are included in such list; and

'(K) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

'(3) **OTHER MEANS**- If the Commission, during the rulemaking proceeding initiated under paragraph (1), required by this subsection, determines that another means to accomplish the purposes of this section will provide equivalent protection of telephone subscriber privacy rights in a more efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers, the Commission shall prescribe such regulations as are necessary to implement such other means. Such regulation shall be prescribed, after notice and opportunity for comment thereon, not later than 270 days after the date of enactment of this section.

'(d) **TECHNICAL AND PROCEDURAL STANDARDS**-

'(1) **TELEPHONE FACSIMILE MACHINES**- The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which--

'(A) is manufactured after 6 months after the date of enactment of this section, and

'(B) is used for the distribution of unsolicited advertising,

clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business or other entity sending the advertisement, and the telephone number of the sending machine or of such business. The Commission shall exempt from such standards, for 12 months after such date of enactment, telephone facsimile machines that do not have the capacity for automatic dialing and transmission and that are not capable of operation through an interface with a computer.

'(2) **AUTOMATIC TELEPHONE DIALING SYSTEMS**- The Commission shall prescribe technical and procedural standards for automatic telephone dialing systems that are used to transmit any prerecorded telephone solicitation. Such standards shall require that--

'(A) all prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business or other entity; and

'(B) such systems will, as soon as is technically practicable (given the Limitations of the telephone exchange service facilities) after the called party hangs up, automatically create a disconnect signal or on-hook condition which allows the called party's line to be released.

'(e) CONSIDERATION OF **FACSIMILE MACHINE RESTRICTIONS**- Within 90 days after the date of enactment of **this section**, the Commission shall initiate **a rulemaking proceeding** to prescribe **rules to restrict the use** of **my** telephone **facsimile machine or computer** or other electronic device to **send my** unsolicited **advertisement to the** telephone **facsimile machine** of any person. In **establishing** such **restrictions**, the Commission shall consider--

'(1) the extent to which unsolicited **advertisements are transmitted through** telephone facsimile machines;

'(2) the extent to which recipients of such **advertisements incur costs for such receipt**; and

'(3) the most **cost** effective methods of preventing **advertising abuses** with telephone facsimile machines.

'(f) STATE LAW NOT PREEMPTED- Nothing in **this** section or in the regulations prescribed under **this** section shall preempt any State law that **imposes** more **restrictive intrastate** requirements or regulations **on**, or which prohibits, either or **both** of the following:

'(1) The use of telephone facsimile **machines** or other electronic devices to send unsolicited **advertisements**.

'(2) The use **of** automatic telephone **dialing** systems to **transmit prerecorded** telephone solicitations.

'(g) EFFECTIVE DATE OF **REQUIREMENTS**- The requirements of **this** section shall take effect 30 days after the date that regulations are prescribed under subsection (c).'

### SEC. 3. CONFORMING AMENDMENT.

Section 2(b) of the Communications Act of 1934 is amended by striking 'Except as provided' and all that follows through 'and subject to the provisions' and inserting 'Except as provided in sections 223 through 227. inclusive, and subject to the provisions'.

---

#### THIS SEARCH

[Next Hit](#)

[Prev Hit](#)

[Hit List](#)

#### THIS DOCUMENT

[Forward](#)

[Back](#)

[Best Sections](#)

[Doc Contents](#)

#### GO TO

[New Bills Search](#)

[HomePage](#)

[Help](#)

---



---

<b>THIS SEARCH</b>	<b>THIS DOCUMENT</b>	<b>GO TO</b>
<a href="#">Next Hit</a>	<a href="#">Forward</a>	<a href="#">New Bills Search</a>
<a href="#">Prev Hit</a>	<a href="#">Back</a>	<a href="#">HomePage</a>
<a href="#">Hit List</a>	<a href="#">Best Sections</a>	<a href="#">Help</a>
	<a href="#">Doc Contents</a>	

---

Bill 1 of 5

There are 4 other versions of this bill.

<a href="#">References to this bill in the Congressional Record</a>	<a href="#">Link to the Bill Summary &amp; Status file.</a>	<a href="#">Full Display - 13,023 bytes.</a> <a href="#">[Help]</a>
---	---	---

Automated Telephone Consumer Protection Act (Passed by the Senate)

102d CONGRESS

Ia Session

S. 1462

AN ACT

To amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment.

S 1462 ES

102d CONGRESS

1st session

S. 1462

---

AN ACT

To amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Automated Telephone Consumer Protection Act'.

**SEC. 2. RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE**





## EQUIPMENT.

(a) AMENDMENT- ~~Title II~~ of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

### 'SEC. 228. RESTRICTIONS ON ~~THE~~ USE OF AUTOMATED TELEPHONE EQUIPMENT.

'(a) ~~DEFINITIONS-~~ As used in this section--

'(I) The term 'automatic telephone dialing system' ~~means equipment which has~~ the capacity--

'(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

'(B) to dial such numbers.

'(2) The term 'telephone facsimile machine' ~~means~~ equipment which ~~has~~ the capacity to transcribe text or images, or ~~both~~, from paper into an electronic signal and to transmit that signal over a regular telephone line.

'(3) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

'(b) Restrictions-

'(1) ~~REGULATIONS-~~ The Commission shall prescribe regulations to make it unlawful for any person within the United States--

'(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice--

'(i) to any emergency telephone line (including any '911' line and any emergency line of a hospital, medical physician or service office, health care facility, or fire protection or law enforcement agency) or to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

'(ii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or radio common carrier service, or any other service for which the called party is charged for the call;

'(B) to initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call is initiated for emergency purposes: